

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1294 of 1999

WITH

MISC. CRIMINAL APPLICATION NO.1121 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DAHYABHAI KALUBHAI SOLANKI

Versus

NIKUSHU FAB. P.LTD.

Appearance:

MR HARESH J TRIVEDI for Petitioner
MR UM SHASTRI for Respondent No. 1
NOTICE SERVED for Respondent No. 4
MR. K. P. RAVAL for Respondent No. 5

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 28/12/1999

ORAL JUDGEMENT

#. Heard learned advocate Mr.H.J.Trivedi, for the appellant and learned advocate Mr.Uday Shastri for the respondent no.1 to 4 and learned A.P.P. Mr.K.P.Raval for the respondent no.5 -State.

#. This is an appeal filed by the complainant Mr.D.K.Solanki- Law Officer Gujarat Pollution Control Board, Gandhinagar against a judgement and order of Chief Metropolitan Magistrate, Ahmedabad passed on 19.11.98 acquitting all the four accused in Criminal Case No.417 of 1995. The accused were charged in the above said criminal case for the breach of Sec.24, 25, 26, 43, 44 and 47 of the Water (Prevention and Control of Pollution) Act 1974.

#. Learned Metropolitan Magistrate acquitted the accused mainly on the ground that Rule 27 of the Water (Prevention and Control of Pollution) Rule 1979 was not followed by the complainant. The officer of the complainant board visited the Industrial Unit of the accused on 28.10.83, which was engaged in processing of polyester cloth and sample of effluent was collected and was sent to the analyst. According to report of analyst the sample of the effluent was not conforming to the standard laid down by the act and rules.

#. After recording of the evidence and after hearing both the sides learned Metropolitan Magistrate in para 11 and 12 of his judgment, after considering the evidence on record has decided that there is non compliance on the part of the mandatory provision of the rules in forwarding the sample to the analyst and analyzing the same and therefore according to the Metropolitan Magistrate the whole trial was vitiated and the accused were entitled to acquittal.

#. The original accused nos. 1 to 4 are respondents in this appeal. Learned advocate Mr.Shastri on behalf of the respondent no.1 to 4 has relied upon a decision of Dahyabhai Kalubhai Solandi Vs Divine Intermediates & Chemicals as reported in 1996 (2) G.L.H. P.138, wherein this court was pleased to decide that rule 27 of Water (Prevention and Control of Pollution) Act 1976 was mandatory in nature and non compliance thereof would vitiate a trial. Mr. Shastri also relied upon a unreported judgment of this court in Criminal Misc.Application No.1119/99, parties were Dahyabhai Kalubhai Solanki Vs. Nikushu Fab. Pvt.Ltd., wherein wide an order dtd.19.8.99, this court observed that in view of decision in the matter of D.K.Solanki Vs. Divine Intermediates & Chemicals (Supra) non compliance of the

said rules vitiated the trial and court did not grant permission for filing of an acquittal appeal.

#. In view of the above clear position of the law that the rules under the said Water Act are mandatory and not directory and going through the judgment of learned Metropolitan Magistrate, it is also clear that there is non compliance of the said rules which renders the trial vitiated and accused were acquitted. In these circumstances, interference by this court in the said acquittal of the respondent nos. 1 to 4 is not required at all and the learned Metropolitan Magistrate has rightly held that due to non compliance of the mandatory rules the trial was vitiated and the accused were entitled to acquittal.

#. In the result this appeal is dismissed. Rule discharge.